U.S. DEPARTMENT OF COMMERCE
National Technical Information Service

PB-259 862

PUBLIC HEARING ON ENVIRONMENTAL PROTECTION AGENCY PROPOSED REGULATIONS FOR NEBRASKA AIR IMPLEMENTATION PLAN, HELD AT NEBRASKA CENTER AUDITORIUM, LINCOLN NEBRASKA, AUGUST 29, 1972

Environmental Protection Agency, Kansas City, Missouri
Region VII

1972

322091

PB 259 862

PUBLIC HEARING

ON

ENVIRONMENTAL PROTECTION AGENCY PROPOSED REGULATIONS FOR NEBRASKA AIR IMPLEMENTATION PLAN.

* * *

AT

NEBRASKA CENTER AUDITORIUM
33RD AND HOLDREGE
LINCOLN, NEBRASKA

AT

10:30 O'CLOCK A. M.
TUESDAY,
AUGUST 29, 1972.

BEFORE MR. JOHN MORSE,
REGIONAL COUNSEL, EPA,
KANSAS CITY, MISSOURI.

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COURT REPORTERS AND GENERAL NOTARIES
LINCOLN, NEBRASKA

BIBLIOGRAPHIC DATA SHEET

1. Report No.

2.

3. Recipient's Accession No.
PB-259 862

4. Title and Subtitle
Public Hearing on Environmental Protection Agency Proposed Regulations for Nebraska Air Implementation Plan, Held at Nebraska Center Auditorium, Lincoln, Nebraska, August 29, 1972

5. Report Date
1972

6.

7. Author(s)

8. Performing Organization Rept. No.

9. Performing Organization Name and Address
Environmental Protection Agency
Kansas City, Missouri
Region VII

10. Project/Task/Work Unit No.

11. Contract/Grant No.

12. Sponsoring Organization Name and Address

13. Type of Report & Period Covered

14.

15. Supplementary Notes
(PC A05/MF A01)

16. Abstracts

Documentation is made of a public hearing held by the Environmental Protection Agency of the United States on a proposed rule making under the authority of Section 110 of the Clean Air Act, Public Law 91-604, 84 statutes 1713, relating to approval and promulgation of state implementation plans, and particularly the plan for implementation of the National Air Quality Standards in the state of Nebraska.

17. Key Words and Document Analysis. 17a. Descriptors

*Air pollution abatement,
*Meetings,
*Nebraska,

Regulations,
Planning
Records management,
Regions,
Opinions,
Standards,
Acceptability,
State programs.

17b. Identifiers/Open-Ended Terms
*Implementation air pollution planning programs,
*Public hearings,
Clean Air Act,
Proposals,
Deficiencies.

17c. COSATI Field/Group 13 B

18. Availability Statement
National Technical Information Service
Springfield, Virginia 22161

19. Security Class (This Report)
UNCLASSIFIED

20. Security Class (This Page
UNCLASSIFIED

21. No. of Pages
98p

22. Price
5.00/3.00

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INDEX

Presentations by:	Page
John H. Morse	3 92
Peter J. Culver	7
Senator Loran Schmit	18
Mrs. Betsy Berger	33
Mrs. Marvin Oberg	51
Earl Ahlschwede	60
George Gerdes	64
Delmar R. Serapy	65
James K. Wood	66
Curtis B. Abdouch	68
Charles Ellis	70
Thomas W. Brown	79
William Kripse	87

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MR. JOHN H. MORSE: We'll convene the hearing.

Documentation is made of ~~This is~~ a public hearing held by the Environmental Protection Agency of the United States on ~~this~~ a proposed rule making under the authority of Section 110 of the Clean Air Act, Public Law 91-604, 84 Statutes 1713, relating to approval and promulgation of state implementation plans, and particularly the plan for implementation of the National Air Quality Standards in the State of Nebraska.

For the record, this hearing is convened at 10:30 a.m., August 29, 1972 in Nebraska Center Auditorium, Lincoln, Nebraska.

I'm John H. Morse, Regional Counsel for Region VII of the Environmental Protection Agency, and have been designated as hearing officer to conduct this hearing.

Assisting me in the hearing is Mr. Dewayne E. Durst, Chief of the Air Program Support Branch, Air and Water Program Division, Environmental Protection Agency, Region VII. Also representing the Environmental Protection Agency today is Mr. Peter J. Culver of the Region VII Air Support Branch; and from the Office of Public Affairs,

-3½ Mrs. Eloise Reed; and from the EPA Enforcement Division, Mr. ~~Bill~~ Phil York.

The proposed rules and regulations which are the subject of this hearing were published by the Environmental Protection Agency Administrator in the Federal Register of July 27, 1972. A number of copies of this Federal Register are available here and if any of you want one and haven't received it you can get one from Mrs. Reed.

The proposals would amend Part 52 of Chapter 1, Title 40, go to Federal regulations, and particularly sub part of CC of that chapter by promulgating rules and regulations concerning certain elements of the Air Quality Implementation Plan of Nebraska.

Official notice of this hearing was published in the Federal Register August 18, 1972, Volume 37, Number 161, Page 16694. A copy of this notice is hereby entered in the record as Exhibit 1.

Also news release concerning this hearing was issued by the Environmental Protection Agency on or about August 1, 1972, and a copy of this release and a list of the newspapers, wire services, television, radio stations and interested officials and individuals to whom it was made are entered in the record as Exhibit 2.

Now a word about the procedure and ground rules which we intend to follow in conducting this hearing. Please bear in mind that the subject of this hearing is the rules proposed by the EPA Administrator, and the purpose of the hearing is to receive comments from the public and concerned agencies, organizations, industries and individuals regarding the merits of the proposed rules so that those comments and opinions may be considered by the Administrator before making final adoption and the promulgation of any such rules.

The EPA staff is not here to argue about or to defend the proposed rules, but rather to learn your thinking. Comments, therefore, should be directed as specifically as possible to the proposed rules or any portion of them, and any reasons why you find them or any parts of them to be either satisfactory or unsatisfactory.

Time will not permit cross-examination of any person presenting a statement by other persons in attendance. If anyone believes a question should be asked or raised, concerning a statement of any witness, that question may be directed in writing to the hearing officer who will determine whether the point is to be pursued further. Of course, we may ask a witness for clarification or amplification of some portion of his statement. There will not be time for rebuttal statements, but in order to allow comment on any matters which are related at the hearing or any additional comment not presented here we will keep the record open to receive additional written statements until 4 o'clock p.m. Friday, September 8, 1972 at the Regional Office of the Environmental Protection Agency, 1735 Baltimore, Kansas City, Missouri, 64108.

We request that each person making a statement come to the stand when called upon and give his name and address, and if his comments are made in representation of any agency or organization or firm that should be so stated for the record. All statements will be recorded and transcribed and incorporated in the hearing record together with any additional written statements received up to September 8th. That

-9½

record will be reviewed in the Regional Office and forwarded to Washington by the Administrator of the EPA. A copy of this hearing record will be available for public inspection at the EPA Regional Office. Anyone desiring to obtain a transcript at his own expense should contact the reporter preferably at the conclusion of the hearing.

Quite a number of persons have expressed an interest in making a statement, and I'm going to request that insofar as possible each person limit his statement to fifteen minutes. This of course won't be hard and fast. If you have written copies of your statement please hand them to Mrs. Reed or to the reporter. I'd like to warn anybody making a statement that we have a kind of a tangle of wires down there, but I think that they can be avoided, but we'd like to have each person make their statement from the lectern in front.

And I would like to call first on Peter J. Culver of the Environmental Protection Agency to summarize the proposed rules and regulations.

MR. PETER J. CULVER: Thank you, Mr. Morse. I am Peter J. Culver, Head of the Technical

-11½

Support Section, with the Air Program Support Branch of the Environmental Protection Agency, Kansas City Regional Office.

The "Nebraska Air Quality Implementation Plan" was officially submitted to the Environmental Protection Agency on January 28, 1972. Supplemental information was submitted on February 16, April 25, and June 9, 1972, by the Nebraska Department of Environmental Control. Additional supplemental information was also submitted on January 24 and June 9, 1972.

This Implementation Plan was prepared, adopted, and submitted; as required in the August 14, 1971, Federal Register, entitled "Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Those regulations were recodified on November 25, 1971, at 40 CFR 51.

On Wednesday, May 31, 1972, the Environmental Protection Agency published in the Federal Register, a notice of approval/disapproval of the Nebraska Implementation Plan. This notice was contained in Sub-part CC and appeared on pages 10877 and 10878 of the May 31 Register. On Thursday, July 27, 1972, the Environmental

-11½

Protection Agency published an additional approval/disapproval notice for the Nebraska Implementation Plan. The Environmental Protection Agency published proposed regulations to fulfill regulatory deficiencies identified in the State Plan in the Thursday, July 27, 1972, Federal Register. The proposed regulations for the State of Nebraska appear at Sub-part CC and may be found on pages 15103, 15104, and 15105 of the July 27, 1972, Federal Register. On Friday, August 18, notice appeared on page 16694 of the Federal Register identifying the place and time of the Environmental Protection Agency public hearing for these proposed regulations. I would like to submit the pertinent portions of these three Federal Registers; that is, the May 31, and July 27, 1972, Federal Registers; as exhibits for the transcript of this hearing.

MR. MORSE: Hand them to the reporter and they will be received as Exhibits 3 and 4.

MR. CULVER: My testimony will refer to and quote from three Federal Registers, those of August 14, 1971, recodified on November 25, 1971, May 31, 1972, and July 27, 1972. The requirements of the recodified August 14, Register which were not met, and the Environmental Protection Agency's proposal to correct each deficiency, if required, will be discussed for each disapproved section.

The first requirements which were not met were those relating to Legal Authority, and appeared at 40 CFR 51.11. The May 31 Federal Register contained:

> § 52.1424 Legal authority
>
> (a) The requirements of § 51.11(a)(6) of this chapter are not met since .s27 of the Nebraska Legislative Bill 939 may preclude the release of emission data to the public in certain circumstances.
>
> (b) The requirements of s 51.11(f) of this chapter are not met since the existence of political subdivisions with an air pollution control program relieves the State of responsibility for the plan, because the State cannot enforce either State or local regulations within such political subdivision. In addition, the following deficiencies exist in local agency authority:
>
> (1) Omaha-City of Omaha Permits and Inspection Division:
>
> (i) Authority to require recordkeeping is inadequate (s 51.11(a)(5) of this chapter)
>
> (ii) Authority to require installation of monitoring devices or require periodic reporting is inadequate. (s 51.11(a)(6) of this chapter)
>
> (iii) Authority to make emission data available

to the public is inadequate. (s 51.11(a)(6) of this chapter)

(2) Lincoln-Lincoln-Lancaster County Health Department:

(i) Authority to require recordkeeping is inadequate (s 51.11(a)(5) of this chapter)

(ii) Authority to require installation of monitoring devices or make periodic reports is inadequate. (s 51.11(a)(6) of this chapter)

The May 31, 1972, Federal Register notice citing deficiencies in Omaha's legal authority will be revised to reflect Omaha's adoption of a revised ordinance which became effective on June 7, 1972. This revised City Ordinance corrects all the legal authority deficiencies cited in the May 31, 1972, Federal Register for the City of Omaha.

There is no proposed promulgation to correct the deficiency in legal authority, since the requisite authority is provided to the Environmental Protection Agency in the Clean Air Act as amended in 1970.

The second requirement which was disapproved concerned the procedure for making emission data available to the public and appeared at 40 CFR 51.10(e). The disapproval notice stated:

s 52.1423 General requirements.

(a) The requirements of s 51.10(e) of this chapter are not met since the plan does not provide procedures for making emission data, as correlated with applicable emission limitations, available to the public.

The June 14, 1972, Federal Register contained these proposed regulations to correct the deficiency:

s. 52.1423 General requirements.

(b) Regulation for public availability of emission data. Emission data obtained from owners or operators of stationary sources pursuant to s 52.1429(f) will be correlated with applicable emission limitations and other control measures and will be available to the public during normal business hours at the Regional Office (Region VII).

Subsection 52.1429(f), referred to above, is the Environmental Protection Agency's proposed regulation for source recordkeeping and reporting, which I will discuss shortly. Basically, it requires stationary source operators to report directly to the Environmental Protection Agency, upon notification.

The next deficiency in the Nebraska Plan relates to compliance schedules. The requirements of Subsection 51.15(a)(1) and (2) of this chapter are not met since Nebraska Rule 7(b) does not:

(1) Contain legally enforceable dates by which

all stationary sources must be in compliance, and (2) contain assurances that all existing sources will be notified by the State in a timely manner.

The Environmental Protection Agency's proposed regulations for compliance schedules, as published in the Federal Register at s 51.1425 on July 27, consist of the following requirements:

(1) Compliance with approved Nebraska State, Omaha City, Lincoln-Lancaster County, and Environmental Protection Agency regulations on or before December 31, 1973; including requirements that a source in compliance shall certify that to the Administrator. In addition, any source which achieves compliance after these regulations become effective shall certify such compliance to the Administrator within five days.

(2) Submission of a compliance schedule to the Administrator no later than December 31, 1972. The compliance schedule shall demonstrate compliance with all rules and regulations as expeditiously as practicable, but no later than July 31, 1975. These compliance schedules shall provide for periodic increments of progress. Examples are given.

(3) Certification of attainment or failure to

attain each increment of progress within five days of the deadline for each increment of progress.

(4) Sources subject to the Environmental Protection Agency proposed visible emission regulation shall comply with that regulation on the same date that they are required to comply with the process weight regulation proposed by the Environmental Protection Agency for Jefferson, Gage, and Thayer Counties.

The next requirements which were not met were those relating to s. 51.16, Prevention of air pollution emergency episodes, within the jurisdictional boundaries of the two local control agencies, Omaha City and Lancaster County. Since these two agencies have "examptions" as specified in the Nebraska law. The emergency episode regulations adopted by the Environmental Control Council do not apply within their jurisdictions.

The Environmental Protection Agency proposed regulation is nearly identical to Nebraska Rule 22. Therefore, I will not discuss it in detail; however, it does stipulate emergency episode reporting and emergency reduction plan requirements within the City of Omaha, nearly identical to Nebraska State Rule 22.

The next area in which the Nebraska Implementation Plan was found to be deficient was that pertaining to

"Review of new sources and modifications." As identified in the July 27, 1972, approval/disapproval notice, the deficiencies were:

(1) As specified in the Nebraska "Rules and Regulations Implementing Nebraska Ambient Air Quality Standards," new source review authority applies only to those sources subject to Federal standards under Part 60 of this chapter; otherwise known as "standards of performance for new stationary sources."

(2) The City of Omaha Permits and Inspection Division has not adopted procedures to disapprove construction or modification of sources if they would interfere with attainment or maintenance of a national standard.

(3) The Lincoln-Lancaster County Health Department has not adopted regulations to prevent construction of new sources which would violate applicable portions of the control strategy or would interfere with the attainment or maintenance of the national ambient air quality standards.

The Environmental Protection Agency's July 27, 1972, proposal contained procedures for correcting these three deficiencies.

The next identified deficiencies occurred in

"Source Surveillance." The requirement of s 51.19(a) is that the control agency have procedures to require owners and operators of stationary sources to maintain records and make periodic reports on the nature and amount of emissions. The requirement of s 51.19(b) is that the control agency provide for periodic testing and inspection of sources.

Both the Omaha City Permits and Inspection Division and the Lincoln-Lancaster County Health Department lack adequate procedures for requiring owners and operators of stationary sources to maintain records and make periodic reports on the nature and amount of emissions. The State does not have adequate procedures to require owners or operators of stationary sources to maintain records.

Neither the Omaha City Permits and Inspection Division nor the Lincoln-Lancaster County Health Department provide for periodic testing and inspection of sources.

The requirements of s 51.13 "Control Strategy Particulate Matter," were not met in the Lincoln-Beatrice-Fairbury Intrastate Region since the Plan does not provide for the attainment and maintenance of the national standards for particulate matter.

The Environmental Protection Agency proposed a regulation for process industries applicable within Jefferson, Gage, and Thayer Counties. This regulation is identical to the one currently in effect in Lancaster County.

The requirements of s 51.14(c)(3), "Control Strategy: Nitrogen Oxides," are not met in the jurisdiction of the City of Omaha Permits and Inspection Division since the City has not adopted regulations that provide for the degree of nitrogen oxide emission reduction attainable through the application of reasonably available control technology.

The proposed regulations were contained in the July 27 Federal Register. From testimony at the Environmental Protection Agency public hearings in other States, it has become apparent that the emission reductions contained in this proposal may not be attainable by all types of steam generators. The emission reductions attainable depend upon the type fuel and the particular firing arrangement. These proposed regulations for nitrogen oxide emissions will probably be changed before promulgation.

This concludes my testimony on the Environmental Protection Agency's proposed regulations, as contained in the July 27, Federal Register. There are some recent developments which may require further Environmental Protection Agency proposals and promulgation.

The first of these developments is that through omission, or an error, in printing of the Nebraska State Rules and Regulations; Dakota, Gage, Jefferson, and Thayer Counties were completely omitted from any regulations.

The second of these developments is that there are eleven (11) villages and one (1) second class city in Lancaster County which are not currently under the jurisdiction of the Lincoln-Lancaster Health Department. An August 23, 1972, letter from Mr. Durst to Mr. Sanger concluded with this statement:

"If all of these communities in Lancaster County are not brought under your agency's jurisdiction within the next few weeks, the Environmental Protection Agency will institute procedures for application of Federal regulations in these communities."

This concludes my prepared testimony. If you have any questions, I will try to answer them.

MR. MORSE: I think maybe we'd better proceed with the others who are here to make statements and then later if we have time or if any questions arise with regard to your testimony, Mr. Culver, we'll try and take care of those.

Is Senator Loran Schmit present?

SENATOR LORAN SCHMIT: My name is Loran Schmit, representative of the 23rd Legislative District, co-author of LB-939, which establishes the Department of Environmental Control in Nebraska, along with Senator Willard Waldo.

I am particularly pleased to be allowed to speak here today because I think it's important that all of us, all Nebraskans, allow a sufficient amount of exposure of

14

all these ideas at a time prior to the implementation and prior to their adoption.

I have the confidence in the machinery of government, I believe that if we will express ourselves and express ourselves rationally that those persons who will have to reach their decision will take our opinions into consideration and will subsequently use those opinions and those recommendations in the final adoption of the rules.

I am a little concerned that perhaps all of us are a bit lax in regard to information that is available and the adoption of the materials that we have at hand, and the process that we have to use to make this information available. I know that it was published in the Federal Register, but not very many Nebraska farmers and businessmen not very many housewives read the Nebraska Register or the Federal Register.

I know that we can not expect the Environmental Protection Agency to send each of us an invitation to testify, that we can not expect them to spend a great deal of time to seek out those who would testify. But I want to call attention to the fact that once these rules and regulations are adopted they are for all practical purposes the law of the land, and the people have been subjected to rules and regulations which have not been properly explained and properly identified in the past. For that reason I am

-16½ especially pleased at the good turn out we have here today, and I hope that all of you will speak and speak at whatever length is necessary to make your own position clear, because I am an agreeable and amenable kind of person, I'm especially glad that I do not speak in the last position because I would be inclined to engage in a dialogue perhaps with some of those perhaps that might follow me. I'm not going to do that because in Nebraska the Nebraska Legislature still has the last word and it will be that way so far as I know.

-0 I want to say that first of all I have no objection to the requirement for making available to the public in regard to emission data, I have no objection to that. I want to say here that one of the reasons that I have no objection is because I know that the Department of Environmental Control established in Nebraska under 939 and which is operated under the jurisdiction and influence of the Nebraska Environmental Control Council has shown every willingness to cooperate with the citizens of Nebraska, and because of that attitude on the part of the Director and the Council I have confidence in them and I'm willing to give them whatever authority they need in this area.

There are other areas, and I'm not going to go into each of them individually, but I have told Mr. Higgins that I'm willing to make concessions, I'm willing to allow

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him to use his judgment because I know that his judgment will be tempered with the kind of common sense that he was born with and which has been further accentuated by his relationship with other Nebraskans.

I want to say though that I do have some question. When we talk about the personnel that are going to be involved in the enforcement of the data and in regard to the personnel who are going to be involved in carrying out the rules and regulations, I have a considerable fear that we do not have, we do not have a lot of experts in this area. There are people in this room who have been interested in conservation for forty or fifty years, county agents, voc ag instructors, men who have encouraged others to be conservatives with the soil and water for many years, and the air. But we don't have any program at this time that I'm aware of which is going to turn out instant experts who are going to be qualified to come out to Nebraska businesses, Nebraska farms and say "Do this and you're in the clear. Do this and you will have no more trouble. Do this and you are in compliance."

I have stated repeatedly that I think that when the federal government says "You must do this, and if you do it, and you must do it by a certain time," then I think that the businessman or a farmer who has done that, I think that once he has done that he should be assured that he's not going to be harrassed further. Harassment to some people is a poor choice of word, but I find no other word that is adequate. When a businessman is sufficiently bothered that it interferes with the normal carrying on of his business, then I call it harassment.

And I want to tell you here and now that I have not had the tremendous amount of pressure from the public to clean up Nebraska air. If you fly across these United States you will find that Nebraska is a pretty clean state air-wise.

I have had a tremendous amount of pressure from citizens who have told me, "Schmit, I wish you would stop bothering us, I wish you'd get off our back, I wish you'd stop making me fill out reports and records." I wish that I would not have to spend a certain amount of my time consistently and continually educating new inspectors, only to find within a period of a few days or a few months they go on to new and greener pastures, and then I have to run, recycle, I guess that's a conservative word, then I have to recycle a whole bunch of new inspectors and train them again, and once they get that job done they go on again, and there is no end to it.

And so I want to say that as far as inspectors are concerned, when you send them out, or they come from the EPA or from the Nebraska Environmental Control Council,

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I hope that they come out with the proper attitude, with an attitude of helpfulness, with an attitude of perhaps understanding, compassion if necessary, because if they do we'll get on with the problem of cleaning Nebraska air in those areas where it's necessary, and I think that we will make progress and we will have in Nebraska the kind of atmosphere which many other states are inclined to envy.

In regard to new sources, I have already told the Department that I have no particular objection to the requirement that new industries, new plants, new sources of particulates need to come under their scrutiny, need to be under some type of control. I think that all of us are aware of the fact that we do not want to see any industry come out and haphazardly or carelessly pollute the atmosphere.

So those regulations -- pardon me -- those laws, I want to put it into law, that are necessary to give the director of Environmental Control the authority to regulate new sources, I want to cooperate on that. And I think that we will find some areas of agreement in that area.

When you get to the area of compliance schedules you leave me in somewhat a different point of mind. I don't like to see dates, I don't like to see dates for a variety of reasons because when you establish a date and once you establish it it's very, very difficult to change the atmosphere in Nebraska and all the other forty-nine states.

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It is subject to a great deal of change, conditions change, individuals change. I think that when you establish a date it becomes something which is a target in itself and the accomplishment of the fact that it's not necessarily the point of interest. You look toward a date, and so as a result we crank up the machinery and we turn out the paper and we may not even, we may not do anything except innundate the public with a lot of paper, we haven't really accomplished anything.

Let's allow the dates to be established in individual conversation between the inspectors on the farms and the businesses, the Department of Environmental Control, their directors, and let's let that be a one to one basis.

Someone is going to say that's an expensive situation. Well, if there's anything very economically cheap, and I guess that's the best way to say it, about the Environmental Protection Agency no one has shown it to me yet. So let's not lose sight of the fact that the one to one basis if necessary is going to be the basis on which we're going to get the job done insofar as Nebraska is concerned.

The problem that we have in many areas insofar as the atmosphere is concerned is the fact that we today are drafting rules and regulations, we're talking about laws, and when the environmental conditions change in these states,

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and they do, then those rules and regulations will need to be revised. Not many of you people, but a number of you can think back to the dust bowl days of the '30s. You remember the dust storms when the wind blew for day after day after day and the most serious pollution that we had was the dust in the atmosphere. It rose in the atmosphere for miles and miles and remained there for years. That was the result of a combination of several things; number one, the lack of rainfall; number two, high winds; and, number three, no natural protection for the soil. There's no where here that talks about the protection of the soil with regard to the air pollution, yet only last weekend seven people in California died in eighty accidents on a freeway as a result of a dust storm, a quick dust storm came up in a short period of time, caused a tremendous problem, killed seven people.

I don't think that anyone thought about it as far as this is concerned. We're going to have dry years in Nebraska again.

And now let us come back again to the point that sticks in my mind most vividly. First of all, the entire issue of pollution control, air, water, land is economic. The entire thing is economic. The reason that the farmers today are bulldozing out those shelter belts which we were so glad to plant in the '30's is that the taxes on that

-13

land has risen from a dollar an acre to ten to twenty dollars an acre. The land has risen in value to five to six hundred an acre, and the banker has said that you're not going to borrow money from me, Schmit, unless you put every tillable acre of land into production. And so we bulldoze out those shelter belts in a period that we have now when we have high rainfall. It doesn't make any difference, we enjoy the increased production, the increased economic benefits. But when the time comes that the wind blows and the soil is left without the protection, we can't, there will be no instant way to protect the soil in those instances, it's going to be too late. So it comes back again to the economic.

If the farmer could afford it he would leave the trees there. The reason we are on the land is because we enjoy being out there. Farmers also suffer conversely from the effects of bad air. We live in it, we breathe it and we do not have the benefit of air conditioning as so many do, the poor air and everything, so the form of the air is a detriment to us.

Crops can suffer as a result of pollutants in the atmosphere, it becomes an economic loss to us, it's not a matter of comfort, it becomes a matter of economics again.

You can not separate air pollution from the water pollution or land pollution, all of them have to be interrelated, and that is another reason why I have confidence

-16

in our own Department, I think, because they see the entire picture and they have taken steps in that area. Some of them a little gingerly, I'm sure, but I know that they have taken those steps and I know that they are making some progress.

I know that we have solved in some areas the problem of water pollution, the use of lagoons, the city sewage development, feedlots, and we have complicated the problem of air pollution because they have not always worked. And I have had all the best intention, federal people tell me if it's properly handled it's going to work and it won't smell. But I'll guarantee you that I can take you to more of them that smell than do not smell.

So that the system hasn't worked as perfectly as we would like to have them work. And coming back again to the other statement that I have said, surely you can spend enough money, we can spend more money, and make it work, but how much money are we going to spend? How many dollars can we afford to spend?

The cattle feeder will raise those cattle in glass houses and recycle the manure into perfume if you pay him enough money for it, but he'd not going to do it unless he's paid. The cattle industry has taken a -- in the State of Nebraska, a one hundred million dollar loss in the last seven weeks as a result of federal government jaw-boning on

-18½ the price of meat. At the same time they have come along and increased our cost of production by asking that we not, by not asking, hell, telling us that we can no longer use sylbes on our feed. You get beat down on one side, you get jacked up on the other side, and then they say spend 20 million dollars to build lagoons, and I wonder how much industry is supposed to take.

There's one more thing that we talk about, and that is the amounts of money that is available, and I remember just last week I read in the paper that we were going to spend 14 million dollars in Nebraska at some date to remove the billboards from the Interstate highways and the primary highways, 14 million dollars.

We want to spend 20 million dollars to clean up the feedlots. In many cases undefined problems, in many cases real complicated problems. And then someone says that we're going to spend another 40 million dollars to produce a pollution-free electric generation plant, and someone else says we need to spend another 40 million dollars to remove the last 84 hundreds of one percent of particulates, I believe that's right. And at the same time, at the same time we have one heck of a time to get enough money to air condition the institutions in the State of Nebraska.

Now I'm going to ask you what is the most important, my ability to enjoy an uncluttered particulate-free

-21½ atmosphere as I drive down the road in my air conditioned automobile, or the ability of letting people, unfortunate people who are confined in our institutions and who have to breathe the hot feted air, not air conditioned, that's air pollution insofar as I'm concerned, air-polluted by human bodies confined against their will and beyond their control, in buildings.

Then someone said if you don't do this we're going to take away the federal money. There's a tremendous amount of concern about what is their money and our money. I think all of it is our money, and when someone says if you don't do this we'll take away that, I say "Nuts." And I say it sincerely and not contemptuously because the Congressmen and the Senators are elected as I am, they are elected just as I am, and when you start to take federal money away from the City of Omaha and the City of Lincoln you're going to have three Congressmen and two Senators who are going to take a very dim view of that along with a rather outspoken Governor.

And so I don't tremble in trepidation at the threat of loss of federal funds, especially when it was our money to begin with. And I particularly do not suffer tremendous mental problems at the loss of federal money when I know that to lose the federal money is perhaps the least expensive way of taking the trip. I am not going to stand here and tell you that I will spend ten dollars of state money to get one dollar of federal money, and I'm certainly not going to insist that a businessman or a farmer or anyone else spend money in the like ratio.

I have said this many times before, I am going to keep on saying it; the problem is a real one, we are aware of it, we are doing something, we do it cooperatively, and we'll get it done, but we will not do it, we will not do it under any kind of threat or any kind of duress, and I think that when the job is done it will be done perhaps as nearly correct as it can be done.

It is difficult for me to relax in this area because there is not a day goes by but that I do not get a telephone call from someone who said there were just six men on my farm and they said do this or do that, and then someone else calls and said there were three men to my farm and they said do this or do that and if you don't do it we're sorry. Now I know that Jim Higgins does not condone this, but I know that -- I do not hire many people, but sometimes I know that the people that I hire are over enthusiastic and I can't follow each of them. So therefore when the Director hires people and sends them out into the field he has to depend upon them. And, very frankly, if you have just walked into the feedyard of the cattle feeder who has seen sixty dollars per head go down the drain on his cattle,

25½

who is, who has lost the use of a feed additive that are going to cost him another ten or fifteen percent, and then someone comes and says you're going to have to do this or we're going to make you move, we're going to make you change your operation, especially if he's a young man that's telling you all this, that guy isn't going to like it very good.

I still say that one of the greatest costs of doing business is the extreme number of reports, records, and so forth, that all of us are forced to keep in order that government functions, and I'm a part of it and I'm responsible for it, and I suppose I'll have to settle up for that some day, either in jail or hell, or whatever I have to do it, but the fact is that all of us are inclined to want records and to want to verify those records, and then we have to have someone to inspect the records. And I would say that some of the greatest pollution we have today comes from government because of the verbal pollution that we have, the thermal pollution because of the heat that is generated, and the paper pollution which is generated by the paper blizzard which comes out of Washington and out of the State House. And when I see someone who comes to me with a report this thick that should have been put on one sheet of paper I sort of lose my temper, and all too often reports apparently are judged in regard to their factualness, their authenticity and their value by the size of the blooming thing; and I

27½ don't think that's right.

I'm going to come back in closing and say these things. First of all, we will cooperate, we will cooperate because we want to cooperate, it's in our interest to cooperate, and that's two pretty good reasons.

And, secondly, we'll cooperate because we have the machinery set up whereby we can do so and we can do it and do it effectively.

The third I want to call attention to the fact again that the problem is an economic one, first, last and always, and you can't get away from the economics, there is no way. Someone has to pay, and every one of you here today, both before me and behind me, know who's going to pay -- the consumer is going to pay the bill in the long run. No business can eat it up, so to speak, it has to be passed on or he's going to go broke.

So when you say we're going to clean the air, we're going to make it so clean that you'll have no problem, remind them also that they're going to pay the bill. And when they get the bill they may not like it, and when they don't like it they take it out upon those of us like myself; and this is the one safety thing that we have involved, I think the fact that those of us who are going to face the music are going to have to come out and tell the people, yes, we charge it to you but it's worth it. And I have to

29½ be able to say that it is worth it and point out to them that it is worth it.

And so I want to commend all of you for being here, I want to thank again the officials here for providing for me to speak. I did not mean to belittle anyone, I just think very sincerely and honestly that we need to point out that the cost, first, last and always is there and it's going to be borne by the taxpayers of the State of Nebraska and therefore, and therefore when you draw the plan, when you draw the rule, and you say this is it, be prepared to defend it on a cost basis.

Thank you very much.

MR. MORSE: Thank you, Senator.

I'd now like to call on Mrs. Betsy Berger, Assistant Attorney General of the State of Nebraska.

MRS. BETSY BERGER: Mr. Morse, Mr. Durst and ladies and gentlemen. I submitted five copies of my statement, would you have an extra copy for the reporter.

MR. MORSE: Yes.

MRS. BERGER: Fine. I'm Betsy Berger, Assistant Attorney General of the State of Nebraska, appearing on behalf of the Attorney General.

I'm not going to speak about the wisdom of the regulations as they are proposed but of their legality. The Environmental Protection Agency has responsibility to

32 work within the framework of the Federal Clean Air Act. It is our conclusion from a careful analysis of these proposed rules that the promulgation of such rules would be violative of the Federal Clean Air Act.

I would like to before going into the legal basis of these conclusions given a slight factual background, because I do not find Mr. Culver's statements of fact adequate to explain the position that we are in today.

As you know in August of 1971 the Environmental Protection Agency promulgated some rules, telling the states how to get their plans ready. The plans were to be ready by the 31st of May, 1972. In August, again in the fall, and again in December, the Agency promulgated different versions of how the plan would come out. They came out with general statements and amended them to some degree.

The State of Nebraska as you know last year set up a Department of Environmental Control through LB-939 that Senator Schmit sponsored for the express provision of making Nebraska consistent with the federal scheme that we have an environmental department that can do the job that the federal government requires us to do under the Federal Clean Air Act.

As you know we have this new department and the new law. In order to get the air implementation plan ready for May, 1972 the federal agency, the Environmental Control

34½ Protection Agency, got a private contractor which happened to be IBM to work with the State. They paid for the private contractor.

Now our situation in many respects is identical to those across the country. While we may have different levels of air quality certain of the plan is identical to other states. As an example, we have provisions of what to do if there's an emergency air lift. The private contractor set out in great detail identical provision to that which the federal agencies suggested in emergency air episode. Every portion of what the federal agency required us to promulgate they put it out in the Federal Register the private contractor put into the first Nebraska plan. There were many, many other provisions that were quoted from the Federal Register and were put in that plan.

The plan was submitted to the Environmental Protection Agency prior to its passage through the State channels, and in every respect where the private contractor copied the Federal Register it should have passed muster. I'll get in a moment to the point where the first plan became invalid; but it is beyond belief to assume that the agency today said the parts of our new good plan are invalid because we copied word for word what they required us in the Federal Register is the conclusion that they have to come in now and make some rules, but that is what has happened.

-36½

The original plan that IBM prepared went through our Council because the Environmental Protection Agency people told the Council that that was a plan that met with Federal and State requirements. In fact, as you know, our office found that it did not meet either State or Federal requirements. There has been a great deal of publicity that it did not meet it because it required more than the meeting of secondary and primary air quality standards. However, the plan was rejected because it failed to meet Federal requirements in many respects which were not publicized.

The plan as it provided for air control in the Omaha region required a more stringent clean up than the national law requires for nitrogen oxide emissions; it required more stringent than the secondary or primary level air ambient quality for particulate matter. It did the same for sulfur oxide. In those three respects the Attorney General's Office concluded that the plan was invalid.

The plan had physically, the original plan of course, physically went over to the Federal Agency, they were informed that in the State of Nebraska's legal opinion the plan was invalid, they knew that. What action did they take? They published the plan three months later -- I'm sorry, I forgot the date, they published the plan in the Federal Register as a valid Nebraska plan knowing that it was an invalid Nebraska plan. And then they published

1-38½ comments stating in what respect this invalid plan did not meet Federal requirements.

The Environmental Protection Council in this state promulgated a new invalid plan. That plan meets both the Federal and the State requirements precisely. It is incomplete, however, in part it says it has yet to deal with some of the problems that it plans to deal with. As an example, they have not yet dealt with particulate emissions in the Lancaster, Gage, Thayer, Jefferson County region.

Now this second plan which was valid was submitted to the Federal Agency; the Federal Agency looked at it, they knew that we are in very close contact, they knew that this was a plan which had been a complete supplement to the first plan and now a valid plan under State law. They knew then that they only had one law, one plan coming out of Nebraska.

They decided to put it together with the first plan and deal with it together with the first plan, and published in detail in a subsequent Federal Register issue the reasons why this portion of the original plan was invalid.

This, of course, they can not do by law, nor can they do by the weight of their own regulations, they can only deal with a valid State plan. So part of the problem here is the fact that the Federal Agency in order to promulgate Federal rules for Nebraska is using a, excuses which are not legally defensible under the Federal Clean Air Act.

I now propose to go through the Act, the proposed regulations, and demonstrate why the Federal Agency's promulgation if it carries forward would be invalid.

They propose in Rule 52-1423, a rule concerning emission data. LB-939 states expressly that all emission data of all pollutors are to be made public. The rules and regulations of the Department, the State, of our Department state that all emission data of all pollutors are to be made public. The State Administrative Procedure Act states that all private records of -- that go to a public agency that are required by law to be kept by that private party are public records. There's one exception to this, and that involves what you would expect the situation when a trade secret is involved.

Nebraska law, as does the law of every state and of the Federal Government, protect the disclosure of trade secrets. There was a while when the Federal Agency in our office discussed whether or not the provisions of LB-939 met their disclosure requirements. I was informed by counsel from EPA that because all states had a trade secret exception and because emission data as you can see doesn't really involve trade secrets anyway, that they would not pursue this slight exception to our general rule that all data is required by law by the State agency to be made public.

Therefore, when the Federal Agency attempts to promulgate a rule which states exactly what our plan and our rules say one wonders, one wonders aloud at what the motivation would be.

Now the Federal scheme is not to have the Federal Agency promulgate rules and regs for every state, that is not the scheme. The scheme is to have every state promulgate its own plan so that national primary and secondary ambient air quality standards are met by the state. The states may pursue diversion courses of conduct so long as they arrive at the goal set in the Federal Clean Air Act.

Now the Act says that if the state can't meet the requirement, if there is a bonafide reason that they can not, they can ask for an extension of time. It's only when the state obdurately refuses to meet the first, the primary and the secondary ambient air quality standards that the Federal Administrator may come in and promulgate new rules.

Now if we had not passed 939, if we did not have an agency, if the agency did not attempt, and in my opinion achieve an implementation plan which would achieve primary, secondary ambient air quality standards, naturally the Federal Air Act would then have impowered the Federal Administrator to come in and do the job for the state.

Now the Clean Air Act says that before the Administrator can do that he has to consult with the state agency. He has not consulted with the Council which is the ruling body of the State Agency; rather he's come in and promulgated proposed rules which would be law without going through the first step that's necessary, that of dealing with the Council and asking them if he thinks that they are not in compliance, to move in compliance. He is not allowed to leave that step out, he must ask the Council to comply. He has not made that primary step.

If these rules are promulgated the provisions of the Clean Air Act which allowed the state to ask for an extension of time would be circumvented also.

Now if this emission data requirement were different than which had been promulgated by the state I could understand their saying that we're not in compliance, but here is a precise case where we are in precise compliance.

Compliance schedules. The compliance schedules in the valid State plan are word for word those promulgated by the Federal Agency in the Federal Register last fall. After the implementation plans were on the drawing board, and you know, they took many months, while they were being written, while they were going through the process of being approved in each State -- of course, as I say, these were written by the Federal contractor, they certainly wrote what the Federal Agency required, and our Council approved it.

We have a compliance schedule that states that the person reporting has to give us a schedule within one hundred twenty days of the adoption of the rules. The rules were adopted in the beginning of July of 1972, this is our valid plan. 120 days later this particular rule goes into effect in Nebraska. What does the Federal promulgated rule require? They required for precise compliance schedule but they changed the date and they wanted January 1, 1973. Does that make sense? That is an arbitrary date.

We have the right under Federal law to choose our own way of achieving the goal. If we didn't say 120 days which falls before the first of January, you see, if we said that everybody should be in compliance next March, the Federal Agency does not have the right to come in and say "We want an earlier date." They can only come in when we obdurately refuse to comply with the Federal Act at all, they can not require us to adopt means that fit their best judgment, that is not the Federal scheme.

It is beyond my comprehension to understand why a Federal Agency, absent their legal framework would want to ask the State to change its 120 day compliance schedule for one that's two months later. So what? Now the reason that they are doing this maybe, I can't tell, I don't live in their minds, the reason that they are doing it is to substitute obviously a Federal rule for a State rule. Their procedure as I have said is invalid. Why? They have no authority to substitute a Federal rule for a valid State rule. We therefore object to any promulgation of a rule changing the compliance schedules where the compliance schedules meet the Federal Clean Air Act requirements.

I turn to review of New Source, promulgated Rule 52.1428. Now the Federal Act doesn't allow us to set standards for new sources. Stationary new source emissions, we are pre-empted out of that business by the Clean Air Act. We're also pre-empted out of moving new sources, the automobile, the airplane and the diesel engine. We may set standards for old sources and for modifications of old sources, but the new source emissions are set by Federal law and all the State can do is say "Sure."

Now the State went further than it had to and it stated expressly in the plan that they adopted the Federal standards, it was just superfluous. If we were silent we were pre-empted into adopting and being regulated by Federal new source emissions.

What is left to us in new source? The Clean Air Act says that the State shall have authority in enforcement of those standards, and therefore our plan met that requirement by showing that we would enforce the new standards. The Federal Clean Air Act also says that an implementation plan shall provide that the State deal with the problem of location of a new source, in fact, this has been a requirement that the Federal Agency has not suggested rules on yet.

This country has not yet taken the step that may be down the road of locating new industry so that the total emissions in an area can be controlled. We are therefore excluded from dealing with location of new sources because that is what the Federal Agency is doing in every other state. What does this new rule require? It states that we are not in compliance because we are not dealing with location and design, and the Federal Clean Air Act gives us no authority to deal with the design of new source installations. We did not deal with them, we are pre-empted out of the business.

Under what theory can the Federal Agency then come in and promulgate a rule saying that the State is not in compliance with the Federal Act because we have not dealt with the design of new sources? This is clearly beyond the authority of the Federal Agency. They obviously wish that the Federal Act required the states to deal in design, but the Federal Act does not.

Therefore, a promulgated rule requiring the states to deal with design is clearly beyond the statutory authority of the Agency and would be invalid.

Now they have got this word "design" in, they have got this whole review of new source requirement in way past the date when the states had any opportunity to even think about it. They tell us in the summer of 1972 for the first time that they had an afterthought, they wished that the Federal Act required us to have design, and now they require it and now our plan is no good -- strange.

We object to proposed Rule 52.1426. This is the one that deals with the emergency episodes which I talked about before. This is the lovely example of where the contractor copied verbatim the Federal requirements, suggested requirements, and now the Federal Agency says "Not good enough."

We object to the proposed Rule 52.1432. This is the rule that talks about particulate emissions for Jefferson, Gage, and Thayer Counties. The statutory scheme of the Federal Clean Air Act and its predecessor statutes were to set up air quality regions around the country. An air quality region is set up by Federal statutes in only one way -- by the conjunct action of the State and the Federal Agency.

The reason it was set up included Lancaster, Jefferson, Gage and Thayer. The Federal Agency now proposes to break that region too without the concurrence of the State Council of Environmental Control. The Council has not told them they can change that region, they are attempting to do it unilaterally; they have no statutory authority to

16½

do it.

The particulate schedule that they set up is much worse, this is an undermining completely of the Federal scheme. Now what does the Federal Act say? As you know it says that the states must achieve a secondary air quality standard at a certain date and a primary air quality standard at a certain date, and they don't set out emission schedules for the whole country that are identical. They propose sensibly that each region will measure the emissions in its own area, measure the ambient air quality in its own area, work out the estimation of future pollution sources and their emissions and figure out how to clean up the air.

Well, you can't do that without knowing what the ambient air quality is in a region, that's the first step. Neither the State nor the Federal Government under either of these Acts may tell a region to clean up its air, X-number of emissions, without taking into account only one thing, that we have to achieve secondary and ambient air qualities on certain dates.

The particulate emissions from these three counties have no relationship whatever to the schedule or particulates listed in the proposed rules; these are the admission objectives for Omaha. Omaha was measured, the Omaha interstate region was measured. They found out that the particulate level in Omaha was a certain quality; they ground into that figure what the estimate for the future would be for the next few years, how many more exhausts, how many more automobiles, how many more new sources, an estimate that the best that we can do, and they found out that the Omaha region would be dirtier than the secondary and primary air quality standards for particulates in the proper years, and then they said, "Well, therefore, we have got to roll you back." In the invalid plan, in the invalid plan, IBM did not do its homework properly and prescribed an emission schedule that would have rolled Omaha back to a situation which would have been cleaner than the National Standards. The State law says you can't do that, so the State Agency revised those figures so that the present schedule that Omaha is required to meet will meet the primary, secondary Air Standards.

The Federal Agency proposes to take those Omaha figures for an industrial area based on the measurements of air in Omaha, and throw those figures into Jefferson, Gage and Thayer Counties, and tell those people that they have to limit emissions to those levels. Lawyers call this arbitrary action, it has no basis in rationale, it has no basis in law.

The promulgated rule proposed as 52.1432 is absolute nonsense. The State Council has stated in its Air Implementation Plan that it proposes to deal with this region. Their rules were promulgated in July; here it is August and the Federal Agency proposes to do the job contrary to what their Air Quality, the Air Act says, that the Administrator must go back to the State and ask them to fix up their plan if they find it deficient. He has not done that. They come in a month later and say that "We will promulgate a rule," and not let the State Council do it. This is in violation of the Federal statutory scheme.

Why does the Agency propose to regulate emissions for particulates? Particulates for those of you who don't know is just simply dirt floating in the air. I did not know this, I have become educated. For Jefferson, Gage and Thayer County, without also doing the same thing for the rest of the State. The constitution of the United States and of the State says that you have to treat all counties similarly situated the same. Why these three counties? We fail to understand that. We do understand that it's contrary to Federal law.

We turn to proposed Rule 52.1433. This proposes to set nitrogen oxide emission rates. The same thing that applies to what I have said about particulates apply to nitrogen oxide. Before any agency can regulate emission levels for nitrogen oxide or any other pollutant there has to be a demonstration that there is more of this in the air and project it forward than will meet the secondary and primary ambient air quality standards. There is absolutely no data showing what the emissions for nitrogen oxide are in these three counties.

Lastly, we object onto the legal basis of having a proposed rule making hearing today. The Federal Administrative Procedure Act requires thirty days notice before a Federal Agency can have a proposed rule making hearing; thirty days were not given.

The Federal Agency further has a responsibility of telling the public what it proposes to change, what the rule making is supposed to be. Senator Schmit has commented about the fact that most people don't read the Federal Register; that's very true. But you will find if you read the Federal Register the effective notice was not given. There are places where numbers have been given to our plans paragraphs. That makes sense. But they haven't given the parallel number for the State paragraph. No member of the public can read these proposed rules and find out what it is, what paragraphs in the original plan were supposed to be changed, and the people who work with this all the time can tell from the context, but no member of the public can, and therefore it is our assertion that no effective notice was given.

Further, by commenting on the invalid plan together with the valid plan we assert that no effective notice was given to the public so that they could figure out that there was a valid plan and it is provisions of the valid plan that are sought to be changed.

If the Clean Air Act, the Federal Clean Air Act, had said that the Federal Agency shall promulgate rules and regs for the entire nation, and if the Federal Agency had then done that, you would then be required if your conscience and your judgment so required to talk at a hearing of this type to the Federal Agency, giving them the reasons why their proposed rules would be sensible or not sensible. But this is a situation where the Federal Act does not give the Federal Agency that scope; that scope is left for the State, it's left for our Council. Our Council has acted, our Council will act further.

It's the opinion of the Attorney General that any proposed rule making that follows the promulgation of these proposed rules then are invalid, and I would be glad to take any questions because I have not taken all my time.

(There was no response.)

MRS. BERGER: Thank you.

MR. MORSE: Thank you, Mrs. Berger.

I don't know what the facilities are in this neighborhood for lunch, but, Mrs. Reed, do you know anything about that, whether there's a cafeteria or anything here in this center.

-28½

I think maybe to avoid conflict with others that might be patronizing the cafeteria we might go ahead for another half hour and then recess for an hour.

I'd like to call on the next witness, Mrs. Marvin Oberg of the Environmental Quality Committee, League of Women Voters.

MRS. OBERG: May I ask if you would like to respond to Mrs. Berger at this point while what she said is still fresh on your mind.

MR. MORSE: Well, I would just simply respond to this extent, that Mrs. Berger expresses legal opinions which are contrary in some respects to those that have been concluded upon by counsel for the Environmental Protection Agency, and some of the principles that she has mentioned have been the subject of considerable legal debate, as she suggests some of the questions arise similarly in others states and we have found some conflict of opinions among Attorneys General in the various states.

Certainly these legal matters which she's touched on are not black and white, not free examples, we feel that we are proceeding in a proper way.

With regard to the, just the procedural notice, which I don't think she considers to be, which seems to be her chief objection here, of course this is not to the, not a rule making hearing within the sense of the Administrative

-30½

Procedure Act, in this connection the proposed regulations published in the Federal Register were published with the notice that comment would be received within thirty days with reference to the proposed rules. This hearing is really a matter of trying to alleviate the objection that, I mean, alleviate for our benefit the objection that both Senator Schmit and Mrs. Berger aver to, that is, the Federal Register is not widely read, that probably if you printed these things in the daily paper they wouldn't be widely read, that this is an opportunity for us to hear from people who either have taken an opportunity to learn of them or have come here for that purpose.

I think that maybe something should be said for a broader distribution of these things and a broader layman's explanation; but this is a communications problem and we probably haven't solved very well.

But as to the precise legal arguments that Mrs. Berger's raised, I don't think that I want to take the time now and I don't think it would be of particular interest to everybody to hear this argument. I might not be able to meet all her arguments anyhow.

MRS. MARVIN OBERG: Good morning, I am Mrs. Marvin Oberg of Omaha, Nebraska, and I'm speaking for the 850 members of the League of Women Voters of Nebraska, and I am the Environmental Quality Chairman of the League of Women

Voters of Nebraska.

And we are part of the League of Women Voters of the United States, with 160,000 members. It is the purpose of the League of Women Voters to promote political responsibility through the informed and active participation of citizens in government.

Across the country, our members agree that the public should participate in decisions on all phases of air pollution control. We welcome this opportunity for citizen participation in this hearing.

It would have been helpful if the news release about the hearing had mentioned that the proposed promulgations could be found in the Federal Register for July 27, 1972 instead of saying that the promulgations will be available in Kansas City or the Department of Environmental Control office in Lincoln, Nebraska. Sending copies of the three pages which carry the promulgations to those who received the news release would have saved long distance telephone calls and endless xeroxing. I understand copies for the public were supposed to have been sent from Kansas City to Lincoln, but, according to the persons I talked to there, they had not been received by August 22nd.

Getting back to the regulations the EPA proposes, the League of Women Voters generally support them.

And I have submitted copies of my testimony, I

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have asked a number of questions in my testimony. I wonder if it would be suitable for you to answer them today or not.

MR. MORSE: Well, I'm not sure that we will, we may have to defer that, we have quite a number of people that have asked to be heard.

MRS. OBERG: I can only summarize my full testimony at this time since it's getting rather late.

Getting down to the particular regulations, the League of Women Voters generally support them. I did make a few cracks about the way that these particular regulations were published, and so forth, but I think that has been covered very well by the others.

There are, of course, complications in having different "Plans" or regulations for different parts of Nebraska. One of the theoretical merits of having federal regulations and controls, such as you are undertaking, is to have uniform regulations and restrictions for all citizens. This makes it more equitable for all citizens and industries, and it makes it easier for them to know what they should be doing to comply with the law. It makes it easier for governmental officials to enforce one law, rather than three or four conflicting laws on the same subject.

Therefore, we hope that the time will soon come, as you suggest in the July 27, 1972 Federal Register, page 15095, when Nebraska can adopt regulations identical or equivalent to those proposed July 27th, and EPA can rescind the Federal regulations for Nebraska.

We are here today largely because of the so-called Wyoming clause in Nebraska's 81-1504. Because of that clause, the Nebraska Attorney General nullified the entire original Nebraska air implementation plan.

I appreciate there are other reasons also but I think that that is the large one.

As the Federal Register of July 27, 1972, page 15095, says, if a state adopts regulations identical or equivalent to the regulations the EPA finally promulgates, EPA will rescind the federal regulation, and the authority will go back to the state. Many Nebraskans prefer state rather than federal control.

Earlier I listed some reasons for federal control. Let me also give some reasons for local or state control. The local or state control is probably cheaper, and I wish there would be some research done on that compared to having something done by the local agencies or the federal agencies. Local people know the local situation and know firsthand who the polluting industries are, and local people are closer to the problems.

Pursuing the matter of different plans for different parts of Nebraska, I can point out that six counties will be under some control, but four governmental bodies are to do the controlling. This may get a little crowded, and someone may step on somebody's toes.

As I understand it, only three counties are subject to emission regulations. This picks on only a few people.

Two of the new regulations apply to the whole state, three and a part of a fourth apply just to Omaha, another part of one of those regulations apply to all of Nebraska except Omaha, and one regulation applies only to the three counties of Jefferson, Gage and Thayer.

Open burning regulations vary from county to county. It seems to us that this is discriminatory. A man shouldn't have to read a book before he dares to light a match.

Looking at the specific regulations, let me just sum up what we have said in those in more detail in our testimony.

First we raised the point in 52.1423 about Nebraska law contradicting Federal law. This is about the availability of emission data, and I asked the question, which supercedes, Federal law or State law in this matter.

Would you care to answer that briefly or not?

MR. MORSE: Well, of course, we take the point of view and have taken the point of view with regard to many similar State laws that because of the exception which Mrs. Berger feels would be so rare as not to really have any

1-37 practical effect, with the exception of trade secrets which may not be disclosed, that the Nebraska law does not permit in all cases a disclosure of emission data. So it isn't really a matter of one taking precedence over the other, it is simply the matter of the Federal law would permit if these regulations are adopted, would permit EPA to require reporting of emission data and would authorize EPA to make those data available to the public at our office. It wouldn't require the State to do anything which under its State law it couldn't do. It would simply be a matter of the Federal Agency collecting the data and making it public rather than the State.

MRS. OBERG: Well, I suggested a possible sentence in addition to our law in 81.1527, and the suggestion which I made was this sentence "Data recording the nature and amounts of emissions of contaminants from any source shall be available at reasonable times for public inspection."

Would you say there would be any merit in including that in our law or not?

MR. MORSE: Just offhand it sounds all right to me, this is the type of a thing that has been suggested in various states. I don't know the precise wording but I think that idea sounds logical.

MRS. OBERG: And next I will look at 52.1428, which is a paragraph about the Metropolitan-Council Bluffs

-39½ Interstate Region. EPA has set up the Metropolitan Omaha-Council Bluffs area as an Air Quality Control Region, where they are supposed to work together and all that.

Therefore we are wondering, and I have to ask the question here, are the regulations which you are setting up for the Metropolitan Omaha area, which is Douglas and Sarpy Counties the same as those you are setting up for Council Bluffs and Pottawattamie County in Iowa, so that they truly can work together as an Air Quality Control Region if the governmental bodies are in agreement?

MR. MORSE: Are you acquainted --

MR. DURST: The Iowa regulations would probably not be identical because the Iowa plan was, the control strategy was approved for the Council Bluffs area so the regulations will allow the Air Quality Standards to be met, but I would say that there might be some differences in those regulations, slight differences.

MRS. OBERG: Would this interfere with these
-0 three counties in two states acting as an Air Quality Control Region?

MR. MORSE: We don't have any joint enforcement authority anyhow, do we?

MR. DURST: No, and I say the differences in these regulations would be a minor point in relation to the inter-governmental problems.

MRS. OBERG: Well, I do raise it as something of concern to us who are interested in having this work out as an Air Quality Control Region.

I also point out in, I think the last paragraph 52.1428, that it appears to me that two words are missing, do you agree, because if they are we all know how a comma or so can change the whole meaning of any statute, and I want to mention it before it becomes definite.

I think it goes "Approval to construct or modify" -- and you don't say what you want to construct or modify, should it perhaps be a source?

MR. MORSE: Well, I think that that probably is a better sentence structure, I can't say that the author of this particular regulation inadvertently left anything out, he just may not have expressed himself very well.

MRS. OBERG: Well, I just thought that I would call it to the attention before you chisel it --

MR. MORSE: Well, I appreciate that and it will be brought to the attention of the Administrator too.

MRS. OBERG: In the matter of the burning regulations which are 52.1432 and correspond to Rule 18 pretty much Nebraska's Air Pollution Control Rules and Regulations, it seems to us that it would be simpler if the same rules would apply almost word for word in the Federal regulations and in the Nebraska regulations, so then it would apply State-wide and also when Nebraska takes over again it won't have to readjust. I will just point that out as a thought.

I also point out that the 52.1432 that in Rule 12, that Nebraska has an additional sentence about two or more units discharging into a single stack. I suggest that consideration be given to include that sentence in the Federal regulation.

And I have been requested to mention the following point, not only by our League members, but also by industry, and this is, we wonder if it would not be helpful to state what industries should do, rather than ask them to submit what they will do. Spell out what each industry should consider, and not only spell it out, but put it in simple language. This point has been made earlier by Senator Schmit, I believe.

Many people in business and industry aren't familiar with the language, let alone the requirements of Air Pollution Control. Now that more people are involved first hand in complying with Air Quality Controls it is more important than ever to put the rules in "people" language.

In closing I would like to suggest again a legislative change that Nebraskans could accomplish by eliminating the Wyoming clause. Many Nebraskans prefer State rather than Federal control. Would deleting the

Wyoming clause go a long way toward putting Air Pollution Control for Nebraska back in the hands of Nebraskans? Could I ask you that as a question?

MR. MORSE: Well, I think this, that certainly would give Nebraska Council, Nebraska Agency, more flexibility in adopting its own State program. It still, of course, would be the requirements of the Federal law and the Federal regulations setting out the points on which State implementation plan must meet Federal requirements. But this has been, of course, a difficulty that the State Agency has had in order to meet the Federal requirements; and at the same time cope with the so called Wyoming clause. I think it would help the State Agency in formulating its own plans.

MRS. OBERG: Thank you.

MR. MORSE: Thank you.

I'm going to call on Mr. Earl Ahlschwede, I think on behalf of the City of Beatrice.

MR. EARL AHLSCHWEDE: Mr. Hearing Officer, my name is Earl Ahlschwede, I'm the Attorney for the City of Beatrice, Nebraska, and I'm here this morning to raise a few points regarding this hearing and the proposed regulations.

First of all I'd like to echo the comments of some of the other speakers regarding notice of this hearing. I think it was very poorly advertised, I learned of it through the Executive Secretary of our local Chamber of

Commerce about a week and a half ago. I received a copy of the proposed regulations from the EPA Kansas City office a week ago today.

I think that there were others in the area, particularly the Gage, Jefferson and Thayer County areas who were unaware of this who would certainly be affected by any proposed regulations should they be implemented by your agency.

The City of Beatrice has no official policy on these regulations because we haven't had a City Council meeting since we received a copy of the Federal Register from your office. We do appreciate the fact that you are holding this hearing open until September 8th to give us an opportunity to express our views in writing, but we do comment that we think that this is also a short period of time to study the impact of these rules on our municipality and employment, businesses in the municipality as well as the possible future businesses in this area.

Now some comments on your open burning section of the proposed regulations. Our city as many cities throughout the State of Nebraska has a problem with diseased elm trees. We burn these trees at the present time, our City Street Department cuts these trees that are on City property and cut several hundred a year. I know that private tree trimmers cut a great number of these trees also, and they

-10½

are disposed of by either burning in the City landfill or in some other location.

The City of Beatrice is on a fiscal year starting August 1st of each year and has made no provisions in its current fiscal year budget to provide for alternative methods of disposing of elm trees.

I submit that this would be a hardship on the City, it would call for extraordinary expenditure of funds, and possibly call for a public hearing and additional taxes definitely uncalled for on such a short notice.

The rules also exempt agricultural operations from the ambient of open burning requirement. We ask whether a farmer living a half a mile from the city limits could burn his elm trees and the City could not burn its elm trees. If this be the case then these regulations as proposed would definitely be discriminatory and arbitrary.

The points raised by Mrs. Berger on behalf of the Attorney General regarding the singling out of these three counties in Southern Nebraska and no apparent action on other counties throughout the State would, of course, with the exception of Lincoln and Omaha, we view as arbitrary and action that is not concurred in by our City, and we wish to call these matters to your attention.

I do plan to bring this matter to the attention of our Mayor and City Council at their next regular meeting and possibly will communicate with your office further regarding our views on this, but these are our initial impressions at this time.

Thank you, Mr. Morse.

MR. MORSE: Thank you.

I'm going to suggest that we, because we still have quite a number of people to be heard, that we recess only for an hour, until 1:30, we will resume the hearing at 1:30.

(Thereupon, at 12:25 p.m., the hearing was recessed until 1:30 o'clock p.m. of the same day.)

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MR. MORSE: Ladies and gentlemen, we'll reconvene the hearing.

The next witness that I have on my list is Mr. George Gerdes, is he here?

MR. GEORGE GERDES: Thank you, sir. I didn't ask to be on this program, but I believe I was placed on there by one of the representatives of the Kansas City office. I will make my remarks very brief and I will not discuss the laws that we are trying to adopt or not adopt.

I was in Washington last week and visited with two different departments, the Interior Department and Mr. Gruten, and there was amendments to the present bill and what alarmed me was that you have three things to be worked into consideration, if you're not going to work a hardship on the people that you are going to administer this law to.

First, you have to have a land use bill or a zoning bill, an air bill and a water bill. Especially on the part of agriculture those three must be tied together. I found these bills and ammndments being drawn up by different people, and there's no connection between them or coordination, and I'm simply here to suggest that that be followed up, that these three different things, land use, air and water be coordinated, that we don't go out and require a man to clean up pollution and then put him out of business because he's in the wrong place.

17 I thank you.

MR. MORSE: Would you give your official title.

MR. GERDES: I'm Executive Director of the Legislative Council.

MR. MORSE: Thank you.

Now is there a representative here on behalf of Nebraska's Tuberculosis and Respiratory Disease Association?

MR. DELMAR R. SERAFY: I'm Delmar Serafy from Omaha, and I'm the Executive Director of the Nebraska Tuberculosis and Respiratory Disease Association.

We're not an expert in engineering on the subject, we were out of the state and have just returned to see a copy of the July 27th issue of the Federal Register only last night, so my comments are intended to be a statement of philosophy toward Air Pollution Control in Nebraska.

We're concerned that there may be no Nebraska plan so we feel compelled to turn to a Federal plan if there is no Nebraska plan.

The Nebraska Tuberculosis and Respiratory Disease Association being interested in the respiratory health of the citizens of this State would go on record as favoring the proposed regulations for Nebraska as proposed by the United States Environmental Protection Agency and published in the Federal Register of July 27, 1972.

We are desirous of improving the Air Quality in

19½ those regions which are currently in excess of the established standards and are opposed to any measures which would permit the degradation of the quality of the air in those regions which are now fortunate enough to have conditions superior to the conditions of the established standards.

Here is a copy of my statement.

MR. MORSE: Thank you, very much, Mr. Serafy.

Is James K. Wood here?

MR. JAMES K. WOOD: My name is James K. Wood and I'm Chairman of the Committee on Air Pollution for the Quality Environment Council, an organization of approximately four hundred citizens now united by their concern for the environment.

And in this capacity also in the capacity as a Professor of Chemistry I wish to make a few brief comments on these proposed rules. I am of the feeling, the belief, that the rules proposed in the Federal Register of July 27th are those in compliance with the Clean Air Act which in one section deals with, Section 110 C of the Clean Air Act, says that after six months after submission of the first plan by a State the State and the Federal people can negotiate back and forth to help pick up any deficiencies, and after the six months period of time the EPA can then propose certain rules to make up these deficiencies, and I feel that this is what EPA has done according to the law.

-21½ And also I feel that the particular comment that some people have made, we do not want our States rights usurped in this case. I do not see this as a condition which EPA or the Federal Government will use this basis to take over a plan for Nebraska. It appears as a sort of a threat but I don't see it as such.

Concerning the sections there on specific source, new source requirements, Sections 420.18 A and 420.11A4 of the Clean Air Quality Act of 1970, states that the particular states in question should have authority in the construction, modification and operation of new sources if they are afraid that they will be in violation of their Air Quality Standards or the implementation plan, either one. Now although I may not be in agreement with a few specific parts of these proposed rules and I was not definitely, or, I was definitely not in agreement publicly with parts of these rules that have already been approved, I must say that I am in favor of these rules as a whole and I urge that the proposed rules be adopted by the State in order hopefully to provide the State of Nebraska with a workable and a legally enforceable plan.

My chief concern is that the revised plan will insure the maintenance of the Air Quality of the Nebraska interests State region, the degradation of the air in out-state Nebraska will be an unnecessary exploitation of one

224½ of the State's greatest resources. Thank you.

MR. MORSE: Thank you very much.

Is Mr. Curtis B. Absouch here.

MR. CURTIS B. ABDOUCH: Mr. Morse, Mr. Durst, my name is Curtis B. Abdouch, I'm a naturalist by profession and it is my professional responsibility to educate people on environmental concerns and issues and monitor citizen response and represent some of these responses publicly.

So historically in 1970 I organized a citizens Clean Air Workshop when ambient Air Quality Standards were considered. Again, in 1972, I organized with eight organizations, citizen organizations, another public workshop which provided citizens with information in preparation for Nebraska with public hearings on their proposed plans for air pollution control.

On January 28th nearly all of these coalition member organizations issued testimony on Nebraska, Nebraska's proposed implementation plan. Nearly all were harmonious in their recognition of certain deficiencies and inadequacies in the Nebraska plan, including the Wyoming amendment.

It was then not surprising, but it was disappointing, dismaying to learn that despite citizen efforts the political atmosphere was more polluted than the Nebraska ambient atmosphere, and the proposed plan was ruled unconstitutional.

For these reasons we find ourselves here together considering the adoption of Federal guidelines which will hopefully piece together a more meaningful approach to air pollution control for this State. Ideally local problems should be solved by local authority. It is clear, however, that at present Nebraska lacks the machinery to accomplish its role in controlling air pollution.

Conversely the EPA will ideally not wish to meddle in State affairs; however, it is clear to me that in the present state of confusion the EPA's inter middle intervention is desirable, necessary and appreciated.

I accept and agree with this present Federal intervention in concept; I am not prepared to comment on the legal or the administrative procedures by which this may come to pass. If however the State and the local authorities can and do conform to the rules and regulations which the Federal Governmment proposes, I would ask the EPA to forfeit their participation in these activities until or unless other situations arise which may require further intervention.

We are concerned today with an air resource which in many sites in Nebraska is so good it deserves protection, not an after the fact cleanup. The responsibility to protect and improve this resource is everyone's, government, business, industry, agriculture and the man on the street. The approach should be mollific , it should be multi-lateral

-31½ without discrimination, except in areas where pollution control is more desirable in those areas that would include the Omaha Region perhaps and perhaps the Lincoln, Lancaster Region.

Everyone knows the debt to environment, most of
this debt has not been paid. Hopefully in the future if
your rules and regulations can be adopted for Nebraska
which are relatively uniform, until such time I urge for
the adoption of these proposed rules and regulations by the
-0 U.S. Environmental Protection Agency, and thank you for the
opportunity to allow me to stand up and be counted today.

MR. MORSE: Thank you, Mr. Abdouch.

Is Mr. Ellis or any other representative of the Associated General Contractors of America present to make a statement?

MR. CHARLES ELLIS: My name is Charles Ellis, I'm here on behalf of the Associated General Contractors, Nebraska Chapter, Heavy and Highway Section.

We welcome the opportunity to discuss the proposed regulations for Nebraska. We do recognize the problem as it exists; we do, however, wish to point out a couple of problem areas as we see it in our industry.

The particular emission table item B, Section 52.1423, which is part of the proposed regulations should be modified in our view in its application by increasing

I-2 the allowable emission rates to levels defined by the use of a factor of 60 in lieu of 55 as a part of the interpolation formula E = 55P raised to the 0.11 power minus 40 where P is greater than 30 tons per hour, or in lieu of this modification a separate regulation for construction process operations of .15 to .20 grains per standard cubic foot of air.

Our second point of interest is that regulations proposed for the application in the Lincoln-Beatrice-Fairbury intrastate region should be held in abeyance pending final resolution of the Nebraska Department of Environmental Control regulations for the State of Nebraska.

As a means of discussing these positions in Nebraska we have construction process equipment with production capability of 100 tons per hour to 300 tons per hour employed in the Heavy and Highway Industry. The proposed emission rates for process weight rates of this magnitude are listed below along with performance efficiencies required to obtain the level of control proposed.

For a 100 ton per hour plant a required efficiency would be 99.974; for a 300 ton per hour plant the efficiency required would be 99.990.

The current manufacturer's performance data for a typical unit with a mix design based on five percent

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passing the two hundred screen would yield the following emission rates and performance efficiencies, depending upon the type of equipment used.

The basic plant with a 36 inch cone and high energy ventury washer would yield about 99.987 percent efficiency in removing particulates. A bag house collector would yield about 99.998. This table is based on a nominal process rate of 344 tons per hour, air volume of 54,000 cubic feet per minute and a dryer emission rate of about 37,000 pounds per hour.

Now then in Nebraska we have within our boundaries generous quantities of local aggregates in the form of sands, sand gravels and limestone, and through the years the professional engineers of numerous consulting firms and the Nebraska Department of Roads have employed these aggregates in various proportions to yield durable economic mix designs for use in improvements throughout the State.

Typical mix designs employed today are listed below. We have a Type A mix design which contains six to eight percent fine material below the 200 mesh. The type B nine to ten percent; Type C six to seven percent passing the 200.

Designations A, B and C are those used by the Nebraska Department of Roads to define these combinations of materials. You will note that the above emission rates tabulated for a 300 ton per hour plant are based on a mixed type design made up of five percent fines, while in Nebraska economical Type B mixed designs include ten percent fines.

Emission rates are affected by the percent passing the 200 screen, and it is necessary to consider the effect of increased fines in the initial mix.

When you take this into consideration and apply it to the previous table that I mentioned, the 36 inch cone collector applied to a plant operating again at 99.987 percent efficiency would emit 150 pounds of material, an increase of 75 pounds as a result of varying the input to the plant.

An 8-inch multi cone and high energy washer would emit 74 pounds, again operating efficiency remaining constant at 99.994. A bag house collector would yield 22 pounds of particulates operating at 99.998.

Inspection of this table will reveal that while performance efficiency remains constant for each of the equipment units, particularly the emissions increase as the amount of fines produced in the process increases. Inspection also suggests only one control process yields emissions within the limits proposed by Table 2-1, or the particulate emission table in the EPA regulation.

Consideration of the performance data for equipment available from all sources tempered with the concept that age and use do have a deleterious effect on performance suggests that during the economic life of this equipment it is not unreasonable regardless of high level maintenance programs to expect some minor reduction in efficiency and resultant emission increase.

The use of a factor of 60 when applied to the proposed table increases emission rates as outlined below. The 100 ton per hour plant would be increased from 51.2 pounds to 55.5; the 300 ton per hour plant would be increased from 62.9 to 72.2 pounds per hour. Based on 54,000 cubic feet of air moving through these plants every minute, this is similar to .16 grains per standard cubic foot of air to give you some relation between the two proposals we suggest.

A comparison of the adjusted emission rates with rate tables proposed in the States of South Dakota, North Dakota, Minnesota, Iowa, Wyoming, Montana, Arizona, Oregon, Kansas and the bay area chart will reveal a rather close agreement as far as our request is concerned.

The adjusted emission rates require performance efficiency of 99.972 in the case of a 100 ton per hour plant; 99.988 in the case of a 300 ton per hour plant. The net effect of increasing emission rates lowers required performance efficiency 0,002 percent.

These expanded allowable emission rates as applied to our industry would provide each contractor the opportunity

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to select the type of equipment best suited to his particular operating configuration, rather than being limited to one type of equipment by environmental regulation. These regulations as written by all practical considerations disallows the use of wet wash secondary treatment. Your sincere consideration of the nature of the aggregates native to our state coupled with the very high performance standards required of the machinery involved along with the large variation in capital investment required hopefully will allow you to accept our proposal which would be no more or less severe than similar regulation proposed in the Mid-western Region of the United States.

Our position concerning implementation of these regulations is perhaps best outlined by referring to the events leading to this consultation here today.

In reviewing the transcript of the consultation on the designation of an air quality control region for the State of Nebraska held on February 24, 1971 and chaired by Mr. D.J. Borchers, we can find no record of attendance by any official from Gage, Jefferson or Thayer County. Mr. Borchers made note of circulation of notice of that meeting to all communities in excess of 25,000 population in the affected area and referred to publication of the meeting notice in the Federal Register.

Unfortunately, Gage, Jefferson, and Thayer

Counties do not have communities of 25,000 population, and I am unable to find one regular subscriber of the Federal Register in Beatrice, Nebraska, the county seat of Gage County and the largest community in Gage County.

Mr. DeWayne Durst, Regional Air Pollution Control Director, Region 7, Kansas City stated that the proceeding was a consultation between appropriate state and local officials and representatives of the Air Pollution Control office of the EPA.

We acknowledge the sincerity of the people of EPA in desiring participation in these consultations, but we wish to point out that the methods employed in advertising that consultation were not effective.

Mr. Walter Franke, the Designated Air Pollution Control Officer for the State of Nebraska, in 1971 advised your agency at that consultation that the Nebraska Air Pollution Control Council did not support the proposed boundary designation.

Mr. Robert Kuzelka, Urban Affairs Coordinator, Nebraska Office of Planning and Programming, was unable to concur or disagree with Mr. Franke's position as his office was not notified about the hearing.

Mr. L.H. Sanger, Director of the Division of Environmental Health of the Lincoln, Lancaster County Health Department and Air Pollution Control Officer of Lincoln-

Lancaster County, recommended that Lancaster County only be designated as Air Quality Control Region III of Nebraska.

The balance of the transcript contains no data supporting the region as defined by EPA. On April 1, 1971, Mr. Henry D. Smith, Director of Health, Nebraska Department of Health, received a letter from the Administrator of EPA, and I quote: "At the consultation, representatives of the State's Air Pollution Control Council recommended that the jurisdiction of the proposed Lincoln-Beatrice-Fairbury Region be limited to Lancaster County, Nebraska. However, after a thorough evaluation of the total record, the decision has been made to expand boundaries of the proposed region to include the counties in the state economic development area 'Building Blocks' 4 and 7. We deem this expansion desirable for the attainment and maintenance of ambient air quality standards in Nebraska." end quote.

Building Blocks 4 and 7 include Cass, Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties, and Saunders County.

The official certificate of the court reporter who transcribed consultation on February 24, 1971, is dated March 2, 1972.

In the span of time between March 2, 1971 and March 30, 1971, your agency made a thorough evaluation, wrote a letter apparently expanding Region III without really providing any reasons, and then today wishes to set regulations in a group of counties which may or may not be commensurate with past decisions.

On August 21, 1972, the Beatrice Daily Sun printed an article related to the consultation held here today. The paper had placed a phone call to the Nebraska Air Pollution Control office in Lincoln concerning another matter, and the hearing was mentioned at that time. The Sun asked for material, and a copy of the July 25, 1972 Federal Register was forwarded and the information was made available to the community by the local news media only eight calendar days prior to the consultation date.

It is our feeling that in all fairness to everyone involved, the means of notifying the people who are to feel the weight of these regulations is still not effective and hence, it is very difficult to become accurately informed regarding the scope of the proposed regulations.

Gentlemen, in the short time alloted us here today, we have attempted to introduce your agency to a portion of the air pollution program as we view it taking into consideration the specific characteristics of our State as best we know them at this time. We have attempted to politely point out the need for improved communication.

We would hope that your agency would allow the people of Nebraska in combination with the State Environmental Control Agency and the State Legislature the opportunity to prepare proper regulations commensurate with Nebraska's conditions within the framework of National Goals.

MR. MORSE: Thank you very much, Mr. Ellis.

Is Mr. Brown, Thomas W. Brown, Platte Valley Sierra Club, here?

MR. THOMAS W. BROWN: Mr. Chairman, I am Tom Brown of Hershey, Nebraska. I am Conservation Chairman of the Platte Valley Sierra Club which is an affiliate of the National Sierra Club headquarterd in San Francisco, California.

My purpose here is to discuss the environmental impact of your proposed rules and regulations on air quality in the Platte Valley of Central Nebraska.

The National Sierra Club has become deeply concerned in recent years about the deterioration of the environment and the pollution caused in satisfying our energy demands. The construction of power plants, dams, transmission lines, oil and gas pipelines, refineries and strip mining have become major issues. Air and water pollution have become serious threats to the quality of our environment.

I do not intend to address myself to the technical features of the proposed rules and regulations. Those features will be considered in a written statement to you at a later date.

We heartily welcome the existence of standards that will protect our air quality. The Platte Valley Sierra Club was dismayed to learn however that your proposed regulations would not have a non-degradation provision and would only apply to those areas in the State where the air quality is below or near the Federal standard. The effect of this limit is to leave the major portion of the State unprotected by any standards.

Let me give you an example of the peril that the Platte Valley faces. Near Sutherland, Nebraska there has been proposed by NPPD a coal-fired steam-generating electric plant of 2000 megawatts

By 1977 the NPPD proposes to have constructed a 650 megawatt steam-generation plant with a second 650 megawatt and a third 900 megawatt unit to follow in subsequent years. It will be known as the Gerald Gentleman plant and be located on a 2,400 acre tract, including one square mile dedicated to an ash pit. A 3,000 acre lake, owned by NPPD, known as the Sutherland Reservoir, will be used primarily as a source of water for cooling the plant. The initial 650 megawatt unit alone is expected to burn between 2 to 2½ million tons of coal a year.

No controls for sulfur or nitrogen oxides are planned for this plant. These are the two pollutants most detrimental to human health. Nitrogen oxides also cause the yellowish or brownish haze associated with air pollution. A combination of nitrogen and sulfur oxides can cause severe damage to growing crops. There is also evidence that sulfur dioxide is causing the production of acid rains downwind from sulfur emitting plants.

According to Sierra Club experts who have been consulted by our club the completed power plant will be producing half as much sulfur dioxide emission daily as all eleven Consolidated Edison plants located in New York City.

The Gerald Gentleman plant will also be emitting daily approximately 24 tons of particulate into the air that is, fully completed plant, and spreading this discharge in a fifty mile radius.

There are presently no air quality regulations that would apply to this plant. When the NPPD Board was considering sites, objections arose from the Nebraska Game, Fish and Parks Department that historic sites such as Chimney Rock and Court House Rock could be affected as tourist attractions due to the pollution if Bridgeport were the chosen site. If the pollution from this plant could be so significant that it would discourage tourists from visiting landmarks, then those of us who live near the proposed Sutherland site are justified in our concern about the effects upon our health and our environment.

We are also advised by our experts in the Sierra

Club that current technology is available to reduce by 1977 the expected emission of sulfur dioxide from 180 tons a day to less than 10 tons a day.

We are further advised that the particulate emitted from this plant can similarly be reduced by 80 percent from the figures proposed by NPPD.

The attitude of the NPPD can be gathered from the statement of Homer Loutzenheiser, NPPD Assistant Manager, that "Once the plant is in, then we can judge the environmental impact of it." This is too late.

Regarding the attitude of NPPD toward the environment, Dr. Eric Sloth, environmental consultant for NPPD, was quoted regarding fishing and mercury pollution at Sutherland Reservoir as saying, "We own the property and it's ours; if we don't want you to fish there then you'll stay out."

The impact of these statements demonstrate that NPPD is primarily motivated by reducing costs of generation, not protection of the environment. 25% of the costs of electricity is coal, and 50% of the cost is generation and transmission, and 25% is the capital investment. Even if NPPD only doubled its capital investment it would only increase the costs of electricity by 25%. However, the needed pollution control devices would not increase the capital investment by that large a percentage.

When you consider that Central Nebraska is a great hunting area and that it has some of the most fertile farm land in the State, and that the area is growing in importance to the State as a tourist area, it would be unwise to sacrifice the Platte Valley to save a slight increase in the cost of electricity.

The greater part of the electricity generated by the Gerald Gentleman Plant will be consumed in the Omaha and Lincoln area and not be in the Platte Valley. If this plant were to be located in either Omaha or Lincoln where most of the electricity is to be consumed, it would have problems meeting the air quality control standards for those two areas. Just because NPPD has changed the site of the plant, should not allow it to escape its environmental responsibilities. The arbitrary choice of site should not affect the standards of air quality control.

I'd like to digress here just a minute. There was some comment about why there should be other areas in the State have cleaner air than some other areas. Well, for the people in Omaha if there weren't some clean air areas maintained to the west of you and the air movement moves from west to east in this country, you people in the Omaha area would never get a clean breath of air because it takes the clean air movement, it takes the movement of clean air out of clean air regions into the dirtier air regions to

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clean these up, so it's a movement of the air out of the clean air regions that will clean the cities up.

We believe that the EPA not only has the authority to prevent non-degradation of air quality in areas such as Central Nebraska, where the quality of air is higher than the national standard, but has the duty to do so.

Our belief is grounded on the well-reasoned interpretation of the Clean Air Act contained in the Federal District Court decision of Sierra Club versus Ruchelshaus, decided in June, 1972, by Judge John H. Pratt, United States District Judge for the District of Columbia.

Judge Pratt referred to Section 101(b) of the Clean Air Act which states the four basic purposes of the Act. These are: "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."

Judge Pratt stated that: "On its face, this language would appear to declare Congress intended to improve the quality of the nation's air and to prevent deterioration of that air quality, no matter how presently pure that quality in some sections of the country happens to be."

The "protect and enhance" language of the Clean Air Act of 1970 stems directly, according to Judge Pratt, from the predecessor Air Quality Act of 1967. The Senate

Report underlying the 1967 Act made it clear that all areas of the country were to come under the protection of the Act.

Turning to the legislative history of the 1970 Act, Judge Pratt referred to the testimony of both Secretary Finch and Under Secretary Veneman of Health, Education and Welfare before Congress that neither the 1967 Act nor the proposed Act would permit the quality of air to be degraded. Of equal importance in Judge Pratt's mind is the language of the Senate Report, in pertinent part which states: "In areas where current air pollution levels are already equal to or better than the air quality goals, the Secretary shall not approve any implementation plan which does not provide, to the maximum extent practicable, for the continued maintenance of such ambient air quality."

In that decision, Judge Pratt concluded that the Clean Air Act of 1970 contains a policy of non-degradation of existing clean air and that the EPA could not approve State plans which allowed pollution levels of clean air to rise to the secondary standard. We have a non-degradation standard which we wish to submit to the EPA for consideration in its proposed rules for the State of Nebraska.

The non-degradation definition is this: An increase in concentration of any of the covered pollutants of more than 20% of micrograms/m3, whichever is larger, above the concentrations existing in 1970-72, averaging either over that volume of air within 1 kilometer of the proposed source or the area measured at ground level within 1 kilometer of the source. The above increase in concentration shall apply for either the annual average, the 24-hour maximum, or the 1 hour maximum concentrations.

In conclusion, Mr. Chairman, the Platte Valley Sierra Club believes that no citizen in this country should expect to be exposed to the possibility that his health or his life could be impaired by industrial pollutants. The incidence of illnesses such as bronchitis, emphysema, and lung cancer have for some time been recognized as related to the products of combustion pollution, whether from cigarette smoking or emissions from coal combustion. Therefore, it is the concern of the Platte Valley Sierra Club that no one in the clean air area of Central Nebraska should suffer from the pollutants from the proposed Gerald Gentleman plant.

The Platte Valley Sierra Club therefore urges the EPA to adopt rules and regulations that apply to the entire State of Nebraska, that it reconsider its non-degradation definition to protect clean air areas of the State, and that it vigorously enforce such standards of non-degradation. We believe the Clean Air Act of 1970 requires it.

Thank you.

MR. MORSE: Thank you, Mr. Brown.

Is Mr. J.H. Biggerstrom present? Mr. Biggerstrom also represents a different chapter here.

(There was no response.)

MR. MORSE: Is Mr. John B. Kiper, Junior present?

(There was no response.)

MR. MORSE: Is Mr. William Kripse of the Nebraska Livestock Feeders Association present?

MR. WILLIAM KRIPSE: I'm William Kripse, and I represent the Nebraska Livestock Feeders Association, and I'm Chairman of the Environmental National Committee.

I guess we have been through these battles before with Water Quality, and so forth, and we're just getting into Air Quality.

Mr. Chairman, there are two questions I would like to ask and if someone from EPA could answer them I'd be very obliged.

In the Federal Register 15105, it's page number and that's the only page number I see on that, it refers in the middle column, No. 4, Fires for Prevention and Control of Disease or Pests.

Now does this in any way allude to agriculture, the burning of deceased animals or anything, and what I wonder about, do you have any specific regulations concerning that's written, this is what I'm interested in.

MR. MORSE: Do you have that right at hand, Pete?

MR. CULVER: Yes, I have it here.

MR. KRIPSE: Does this include agricultural, animal burning, that's what I'm wondering about in case they are deceased, this is what I'm wondering about.

MR. MORSE: Why don't you go ahead with your statement.

MR. KRIPSE: Okay. If it doesn't I will go on to No. 9 which is below this in the same column on this same page; Fires Set in an Agricultural Operation. Do you have any, again, do you have any rules and regulations on this, how far do you go on this, I mean, for instance, the Nebraska Department of Environmental Control allows burning of stubble, corn stubble and weed stubbles and brush fires, that is when you're clearing some land. Above this No. 8 it says land clearing for roads and I understand that it's in the areas where the Nebraska Department has jurisdiction they allow you to burn your brush and trees that you might be, where you might be clearing land.

Are there any rules and regulations for this, and if there aren't I would like to ask that agricultural people, and in my case specifically, people representing livestock industry be asked to sit in on the writing of these rules or at least be asked for consultation on what, on how to write these rules and how far to go.

There's times when you have to have fires to burn

6-3

various types of refuse, and it's really the only way, the only feasible way.

So I would ask EPA that if they do set up rules and regulations here beyond what these rules are here that when you get into specifics that we be asked to sit in on the writing of these because I believe that someone who is more familiar with this type of thing out in the country would have a better chance of explaining why it's necessary and what is necessary. I'll leave that go right now, and if there's anything --

MR. MORSE: Yes, I would say this, we haven't adopted anything that defines, for example, prevention of control of disease or pests or we probably haven't adopted anything that defines in the agricultural operation any more specifically than what is the normal interpretation of these words would be.

We would certainly welcome any suggestions that you or other agricultural organizations might have with reference to the extent of these exceptions.

MR. KRIPSE: Well, whenever you decide how far you want to go along with this, we'd like to review it and add our input to this.

I would like to agree with our Senator Schmit who talked, I think, first or second this morning, about the notification of these hearings.

I-5

Now I imagine that I'm about the same as the rest of the farmers and feeders in the State of Nebraska. We don't read the fine print in our papers where it says notice to contractors, notice of hearings and I think it would be very well, and I realize that it finally hit the paper yesterday, and I think it was because Senator Schmit put it in there or asked them to put it in there that this hearing was to be called.

I think it's very important that EPA would consider a news release along with the official notices that are put into the papers. It seems very advisable. We have people who are, who do not read the papers every day, when you get busy you don't get to read these papers every day, and if you miss one day you're completely out.

So again I'd echo Senator Schmit's wording here on this, I believe it's necessary that we be informed of these.

Now I'm supposed to talk about livestock anyway as far as agricultural operation it is a livestock operation and it's animal agricultural, and I think Senator Schmit said, again was very right when he said that there's not a hundred percent cure for some smell from animal agricultural. We have built various types of water pollution control facilities and we're getting smell from these in most cases. However, I think that we have lived around this, the people that have worked with animals have lived with this for years,

-7½

and I don't think that it's that objectionable of a smell, and personally I'd like to know also how you're going to measure the smell, whether it's obnoxious from, how obnoxious it can get before it's actually a health hazard.

A person can smell quite a smell and not get sick, and it looks like that some common sense ought to be used on this. And if there are controls for livestock, for odor controls and livestock I think they must be feasibly suited because as Senator Schmit again, and I have to refer to him, he said it all this morning, and we've lost forty to sixty dollars in the last seven weeks. Well, seven weeks ago we were just up to about level in comparison with minimum wages of about, we were still about a hundred percent less than what we should be getting for these cattle.

So economically somebody has to pay for these controls, whether it be industrial or whether it be agriculture; so I think that there's got to be a little common sense here in this type of thing, rule making.

As far as -- I think there's been several talks about the non-degradation clause. It looks like this non-degradation clause would eliminate new industry. I can't help but think that before you can, you would be able to put in a new industry and anything you put in would raise, would deteriorate the air quality. I don't care what kind of industry you would put in, I don't think that you can

-10½

eliminate these smells, especially in livestock production. If you had a non-degradation clause in, you couldn't put in a new feedlot because you'd degrade the air quality. I'll admit that you would degrade the air quality, but you won't degrade it to the extent where you can't live with it, you won't degrade it to where it's a health hazard. We people around here live longer than anybody in the United States, in the Central area of the United States here. And I'm definitely opposed to the non-degradation clause.

I think with that, that this is all I have to say; if I could have some answers on some of these others or if we could have some input into this as agricultural people we would appreciate it.

MR. MORSE: I'm sure that if it comes to the point of trying to evolve a definition of the terms used in these agricultural exceptions we will seek advice from agricultural organizations.

I mean, for example, the burning of a stubble field might be one thing, whereas, burning tractor tires might be another thing. And I think that it's this kind of thing that where agricultural operations are things that ought to be discussed with agricultural people.

MR. KRIPSE: All right, thank you.

MR. MORSE: I do want to suggest, there may be some misapprehension about odor controls involved in these

6·13

proposed regulations. I think that Senator Schmit was talking about problems of environmental enforcement generally, and he may have inadvertently given the impression that the proposed directions were given toward odor control, which they are, of course, not.

Another point I wanted to make and I introduced in the record at the outset of the hearing a copy of the news release. Now conceivably the news release that EPA did send out could not discuss in all details the substance of the proposed regulations, but we did send out the news release, it's my understanding that it went out nearly a month ago, if there wasn't some foul up in our mailing that we don't know of, and I think it went to at least every daily newspaper in Nebraska, every radio station, every TV station, and a number of officials. That apparently wasn't a sufficient effort to get the word out to everybody, but it's, the papers I think sometimes and other news media don't want to use the story maybe until it's closer to the time of the event, so maybe that's one reason why it wasn't brought to the attention of more people at an earlier date.

I think I have called on everybody who is on my list, but I don't want to omit anybody, whether he's on the list or not, whether he's asked to be heard, I'm going to ask now if anybody here has anything further to offer.

(There was no response.)

-16

MR. MORSE: We certainly appreciate the good attendance and appreciate the interest shown and especially the concern of those who appeared and made statements for the record.

And reminding you again that if you wish to send us any further statement or material or comment we'll receive that up to a week from Friday.

And there being nothing -- do you have anything, Durst?

MR. DURST: No.

MR. MORSE: If nothing further we'll stand adjourned. Thank you.

(Thereupon, at 2:30 o'clock p.m., the hearing was concluded.)

STATE OF NEBRASKA)
) SS. CERTIFICATE
County of Lancaster)

I, Elmer Shamberg, Court Reporter, Elmer Shamberg and Associates, 1030 South 12th Street, Lincoln, Nebraska, do hereby certify that the within and foregoing is a true and correct transcript of the proceedings reported herein, as taken by me in machine shorthand at the time and place herein specified, and as transcribed by me.

Elmer Shamberg
Stenograph Reporter